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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6384 OF 2005

Raj Mansukhani & Ors. ... Petitioners

Vs.

Rikhiram Tulsiram Arora & Ors. ... Respondents

Ms. D.S. Shah with Ms. Smita Potdar i/b M/s. Mayur Narendra & Co. for the petitioners.

Mr. Mustafa Doctor with Mr. Raj Patel i/b M/s. Hariban & Co. for the respondents.

CORAM: SMT. RANJANA DESAI, J.

DATED: 29TH SEPTEMBER, 2005.

P.C.:-

1. The petitioners are original defendants 1(i), (ii) and (iii) and respondents 1 and 2 are the original plaintiffs and respondents 3 and 4 are original defendants 2 and 3. The plaintiffs and defendants 2 and 3 claim to be the owners of the suit premises. The instant suit was filed against deceased defendant 1 on 16/9/2002 alleging that he has illegally and unauthorisedly started making additions and alterations in the suit premises, without their permission. On 21/11/2003, the plaintiffs took out a notice for permission to amend the plaint. By the amendment, the plaintiffs want to add the fact that after carrying out major additions and alterations of permanent nature and causing waste thereby to the suit premises, defendant 1

(since deceased) now in his place his legal heirs, have actually changed the user of the suit premises by inducting therein M/s. Vijay Group whose Managing Director is Mr. Rashmikant M. Shah. The plaintiffs want to add that they came to know about this through letter dated 15/10/2003 addressed to the plaintiffs' advocate Mr. R.U. Shah by M/s. Mayur Narendra & Co., the advocates of Mr. Rashmikant M. Shah, the Managing Director of M/s. Vijay Group. The trial court allowed the application and, hence, this writ petition.

2. I have heard, at some length, the learned counsel appearing for the petitioners. The learned counsel contended that the trial court erred in allowing the application. She submitted that by the amendment application, the plaintiffs want to introduce a totally inconsistent case. She submitted that the letter on which reliance is placed itself states that Mr. Rashmikant M. Shah, the Managing Director of M/s. Vijay Group in joint venture with deceased defendant 1 was in possession of the suit premises and doing business of developing hotels, restaurants and immoveable properties. The premises were used for business of joint venture. The learned counsel, therefore, contended that this letter only indicates that even when defendant 1 was alive, the suit premises were used for business purposes. The plaintiffs are, therefore, trying to change the cause of action. Besides, the plaintiffs have filed another suit against defendant 1 in respect of alleged occupation

of the suit premises by M/s. Vijay Group. Hence, the amendment ought not to be allowed.

3. I find no substance in the submission. The amendment is a pre-trial amendment. The merits of the amendment cannot be considered at this stage. By this application, the plaintiffs merely want to add certain facts, which they gathered after the suit was filed. No inconsistency is sought to be incorporated in the suit. The fact that the plaintiffs have filed another suit is not relevant. The defendants can always file additional written statement. There is no substance in the petition.

4. Petition is dismissed.

(SMT. RANJANA DESAI, J.)